



March 22, 2001

Mr. Howard C. Berger  
Attorney at Law  
P.O. Box 299  
Floresville, Texas 78114

OR2001-1130

Dear Mr. Berger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145225.

The City of Floresville Police Department (the “department”) received a request for information related to three cases. The documents you submitted to our office indicate that information related to two of the three cases has been released to the requestor. You ask us whether the third report, Case No. 214500, is confidential under section 58.106 or other provisions of Chapter 51 of the Family Code. We have reviewed the applicable provisions of law and the submitted information.

Before we address your claim, we begin with several procedural shortcomings of the department in seeking this decision. The department failed to abide by the requirements of section 552.301 of the Government Code in several ways. First, subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act’s] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body *must* ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the *10th business day* after the date of receiving the written request.

Gov't Code § 552.301(a),(b) (emphasis added). It is not clear from the documents submitted to this office when the department received the request for the information at issue. However, a letter from the city attorney to the requestor dated October 2, 2000 indicates that the request for information was received sometime prior to that date. This office received the department's request for a decision on January 15, 2001. Thus, the department missed the 10-day deadline under section 552.301(b) by more than 60 business days.

Second, subsection 552.301(d) provides:

(d) A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10<sup>th</sup> business day after the date of receiving the requestor's written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is with an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Gov't Code, § 552.301(d). The written statement that you provided to the requestor dated October 2, 2000 does not indicate that the department has "asked for a decision from the attorney general." In addition, none of the documents you submitted to our office indicates that you forwarded to the requestor a copy of any written communication to our office asking for a decision.<sup>1</sup>

Finally, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request:

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<sup>1</sup> In two letters you sent to the requestor, you determined that the request must be denied under the Public Information Act. This determination is not in accordance with section 552.301 of the Government Code. The attorney general must determine whether requested information is excepted from required public disclosure unless a governmental body has received from this office a previous determination that the precise information at issue is excepted from public disclosure. See Gov't Code § 552.301(f).

- (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;
- (2) a copy of the written request for information;
- (3) a signed statement or sufficient evidence showing the date the governmental body received the written request; and
- (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

Gov't Code § 552.301(e). You did not submit written comments to this office stating the reasons why chapter 51 or section 58.106 of the Family Code would permit the information to be withheld from disclosure. You also did not provide us with a signed statement or sufficient evidence showing the date that the department received the written request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information that overcomes this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A demonstration that the requested information is deemed confidential by law or implicates a third party's interest is a compelling interest sufficient to negate this presumption. *See Open Records Decision No. 150 (1977)*. As you raise section 58.106, a confidentiality statute, and other provisions of chapter 51 of the Family Code, we will address your claim.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as section 58.106 of the Family Code. Section 58.106 deems confidential information contained in the juvenile justice information system. Section 58.104 of the Family Code provides that the juvenile justice information system shall consist of information relating to certain delinquent conduct committed by a juvenile offender that would constitute a criminal offense. *See Fam. Code § 58.104(a)*. You have not demonstrated that the complaint submitted to us for review concerns information related to delinquent conduct committed by a juvenile offender that would constitute a criminal offense. Therefore, the complaint at issue cannot be considered confidential pursuant to section 58.106 of the Family Code.

Furthermore, the report is not made confidential by other provisions of chapter 51 of the Family Code, such as section 58.007, which applies to law enforcement records of juvenile offenders. Again, the report does not concern juvenile conduct of a juvenile offender. *See id.* at §§ 58.001(a), .007(c), .104(a). Thus, we conclude that the report is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.106 or any other provision of chapter 51 of the Family Code. Therefore, report number 214500 must be released to the requestor.

In summary, the department's failure to request an attorney general decision as provided by section 552.301 and to provide the requestor with the information required by section 552.301(d) results in the legal presumption that the requested information is public and must be released. The department has not demonstrated a compelling reason to withhold the information. Therefore, complaint number 214500 must be released to the requestor. In the future, we urge the department to comply with the requirements of section 552.301 of the Government Code when seeking to withhold requested information from a requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/RJB/seg

Ref: ID# 145225

Encl. Submitted documents

cc: Ms. Joellen R. Sanchez  
2008 3<sup>rd</sup> Street  
Floresville, Texas 78114  
(w/o enclosures)